

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re DANIEL E., a Person Coming Under
the Juvenile Court Law.

JESSIE P.,

Petitioner,

v.

HUMBOLDT COUNTY SUPERIOR
COURT,

Respondent.

HUMBOLDT COUNTY DEPARTMENT
OF HEALTH AND HUMAN
SERVICES,

Real Party in Interest.

A155584

(Humboldt County
Super. Ct. No. JV170245)

Jesse P. (Father), the father of 13-month-old Daniel E., petitions under California Rules of Court, rule 8.452 to vacate the trial court's order setting a hearing under Welfare and Institutions Code section 366.26.¹ Father contends the evidence fails to support the court's finding that the Humboldt County Department of Health and Human Services (the Department) offered him reasonable reunification services. We deny the petition on its merits.

¹ Further statutory references are to the Welfare and Institutions Code.

Background

Daniel's mother has not challenged the order terminating services, so the following discussion focuses on Father.

Detention and Jurisdiction

The family came to the Department's attention on October 10, 2017, when it received a referral alleging both parents neglected Mother's four-year-old son Damien² and that Father emotionally abused him. There were also allegations of domestic violence, a possible lack of food in the home and that Mother appeared to be under the influence of heroin. Damien had bruises around his left eye, forehead, right jaw, behind his right ear, and on his lower back.

The resulting investigation revealed physical abuse. Damien said Father hurt him and would "stick[] his finger down Damien's throat until Damien chokes." There were strangulation marks around Mother's neck, but she denied any domestic violence. Marijuana, pills, smoking devices and highly concentrated heroin were found in the home and accessible to Damien. He was removed and ultimately placed with his father, Steven F. Father was arrested and incarcerated at the Humboldt County Correctional Facility (HCCF).

Daniel was born prematurely four weeks later with drugs in his system, weighing under four pounds. He exhibited mild to moderate tremors, sneezing and a high-pitched cry, all symptoms of drug withdrawal, and was placed in neonatal intensive care.

Social workers met with Father at HCCF On November 7, 2017, the day after Daniel's birth. They explained Daniel had been placed in protective custody and tried to explain the upcoming court proceedings, but Father kept trying to discuss the physical abuse allegations regarding Damien and asking that his charges be dropped. He said he "never hit Damien on the face," only spanked him, and that "after he spanks him, Damien laughs."

² Daniel and Damien have different fathers. Mother was pregnant at the time.

On November 13, 2017, Daniel was detained. On December 18, 2017, the court sustained jurisdiction and set a dispositional hearing for January 2, 2018.

Disposition Report

The disposition report, submitted on December 27, 2017, stated that Father was released from jail on or around December 7 and admitted to St. Joseph's Hospital the next day.³ By December 13 he discharged himself from the hospital, and since then the Department had been unable to locate him.

Father had a long criminal history that included drug and weapons offenses and multiple parole violations. On October 10, 2017, Mother told the social worker that Father beat her up and strangled her, but the following day said she got the bruises around her neck and eye when a branch hit her while she was gardening. On November 20 Father said the bruises resulted "from a sexual thing where [Mother] asked [Father] to choke her while they were intimate."

On November 25 the Department was told that Father had bragged to fellow inmates about harming Damien and torturing him by putting his fingers down the child's throat. Father insisted "that he does not physical[ly] abuse Damien, he tickles him."

Father told the social worker he was coming off of " 'crystal' " when he first met Mother in 2015, and caring for Damien helped him stop using. He denied a substance abuse problem, but he was willing to enter a treatment facility if required following a substance abuse assessment. Father also expressed motivation to learn how to provide a safe home for Daniel, gain tools for parenting, and learn to discipline appropriately and raise a happy, healthy child. He participated in one session of a Love and Logic parenting class at HCCF before he was placed on maximum security. He said he loved the class and was learning how to discipline children "without hurting them, threatening them, or arguing with them."

On or around December 8, Father was released from custody to St. Joseph's Hospital. He told the social worker he needed to learn how to manage his anger, was

³ Father suffers from Crohn's disease.

willing to undergo substance abuse treatment “because he believes that it will be a requirement for his criminal sentencing,” and that he needed to speak with someone about his mental health. But by December 13 Father had discharged himself from the hospital. As of December 27, his whereabouts were unknown.

Daniel was a medically fragile infant. He was diagnosed with congenital torticollis, congestive heart failure, pulmonary edema and tachycardia. He was still experiencing tremors and would awaken “extremely fussy” three or four times during sleep, indicating prenatal opiate exposure. Daniel reacted to light but would not focus on a speaker’s eyes or face, suggesting he had possible congenital cataracts or neuropathy. His pediatrician recommended that Daniel not visit Father at HCCF or the hospital until he grew stronger because he was susceptible to viruses. The Department recommended that visitation be offered when it became safe to do so.

The disposition report stated that in order to reunify Father needed to handle anger appropriately, show he knows age appropriate behavior for his child, stay drug free and comply with drug testing and medical or psychological treatment, demonstrate he can provide for Daniel’s educational, medical, dental and physical needs, and obtain and maintain a stable, safe and suitable home for himself and Daniel.

The Department recommended that both parents be offered reunification services. Father’s case plan included completing a mental health evaluation, assessments for anger management and substance abuse, and a parenting skills class. Supervised visits would be arranged when Daniel was medically cleared for visitation. The social worker would assist the family in accessing services, seeking community resources and engaging them in working toward successful reunification. The plan specified the social worker would contact the parents at least once a month.

Addendum Report

On February 8, 2018 the Department submitted an addendum report. Father was again incarcerated at HCCF. Daniel had suffered two incidences of pulmonary edema and had impaired vision and symptoms of central nervous system problems, but his health had sufficiently improved for visits at the Family Connection Center in Eureka. It

was recommended that Daniel's parents be medically cleared before visits and, to limit the risk of contagion, that visits be limited to two hours.

Disposition Hearing

The disposition hearing was held on February 8. The parties submitted on the reports. The court ordered the Department to provide reunification services to both parents but found visitation at that time would be detrimental to Daniel.

Six-Month Status Review Report

The Department's status review report for the six-month review hearing was submitted July 27, 2018. Father had been convicted of felony child endangerment and was serving a 2-year sentence at San Quentin State Prison, with 377 days of credit for his time at HCCF. He would be eligible for parole in December 2018.

The report states that the social worker met with Father at HCCF on November 28, 2017. Father told her he had applied to enter the Progress House treatment program. On November 29 the social worker mailed Father educational materials about how drug abuse affects children, with paper and envelopes, and asked him to inform her about what he thought of the reading material. He did not respond.

On December 7, 2017, Father called the social worker to report that he had been released from HCCF to St. Joseph's Hospital. The next day he told the social worker he wanted to enter a substance abuse program with Mother and Daniel. On December 14 Father's probation officer reported that Father had absconded from the hospital.

On December 26 Father texted the social worker from a new phone number. He reported he had been "couch surfing" in Eureka and unable to address the objectives of his case plan "because he has Crohn's disease and cannot receive the immunotherapy treatment he needs." Father said he had been looking into the Crossroads and Waterfront programs, but he could not participate because of his health problems. On December 28 Father left the social worker a message saying he would go to Humboldt County Alcohol and Other Drugs (AOD) for an assessment. He did not do so.

It is not clear from the record when Father returned to HCCF. On February 22, 2018, the social worker tried to visit him there but she was directed to St. Joseph's

Hospital where she was not able to speak with him.⁴ On March 5 Mother told the social worker that Father was back at HCCF. In early May Father told the social worker he had been moved from the medical unit, was working with a correctional counselor, and would be able to participate in AOD and anger management programs. A few days later Father's counselor told the social worker that Father was participating in individual counseling and attending groups.

In late May the social worker approved funds for Father to participate in the Crossroad program. Father told her he had been released from HCCF and had an appointment for an AOD assessment. He entered inpatient treatment at Crossroads on June 1, but on June 25 he was remanded into custody and transported to San Quentin to serve his sentence.

According to the status review report, Father had been referred prior to June 25 for mental health assessments during his various releases from HCCF but never reported an assessment or engaging in anger management. He was also referred to Love and Logic and attended one class.

Father requested a visit in early December 2017, while he was at St. Joseph's Hospital. But Daniel's health problems precluded visitation, so the request was denied. The Department provided five supervised visits with Daniel between Father's May 20 release from HCCF and his June 25 remand to custody.

The Department recommended that reunification services be terminated. "The Department recognizes that [the parents] love their son very much, however both parents have not made significant progress in addressing their substance abuse issues and safety concerns that were present with [Mother's] oldest son, and now [Mother's] infant. The parents have not addressed [the] issues which brought this matter before the Court. The child will be put at significant risk of harm if returned to [the parents] at this time."

⁴ Father stated in a declaration that "[f]rom January 2018 to March 2018, my health condition deteriorated and required hospitalization at St. Joseph's and intense medical treatment [at] the medical unit of HCCF."

Addendum to Six-Month Status Review Report

On August 28, 2018, the Department submitted an addendum to the six-month review report that attached a threatening letter from Father to the social worker dated August 20. In the letter, Father referred to the social worker as a “bitch-ass,” “bitch,” “dumb lying cunt” and “evil fucking person [and] a worthless piece of shit;” said she “lied about shit constantly,” and threatened that “I’m coming for your job and your whole sense of comfort . . . When I’m done you won’t be shit, have shit, or be able to do shit.” He closed by demanding weekly four-hour visits with Daniel at San Quentin.

Father asked to be transported from San Quentin for the six-month review hearing. The court denied the request and invited Father to submit written testimony and/or listen to the proceedings telephonically.

Six-Month Review Hearing

The six-month review hearing was held on October 10, 11 and 12, 2018. The social worker testified that she first met Father when she visited him at HCCF on November 20, 2017. They discussed his criminal case, his relationship with Mother, what his needs were, and Daniel’s medical status. The social worker stressed the importance of Father demonstrating his ability to provide a safe place for his son. She explained that Father would be responsible for meeting the requirements of his case plan despite challenges presented by his medical condition, and that she would help him meet those requirements while he was incarcerated. Father told her he was taking the Love and Logic class and needed help with anger management. He denied having a substance abuse problem but acknowledged he would have to engage in a drug program due to the charges against him.

Father and the social worker spoke again on November 26. He told her the parenting materials she sent him were “dumb.” Although he had been referred to Love and Logic at HCCF he could not participate because he was on maximum security. He was referred to the program a second time after he was released in May.

Father entered treatment at Crossroads after his release but was unable to complete the program because he was remanded to serve his prison sentence on June 25. He

attended just one parenting class after his release from HCCF. The social worker tried to meet with Father during the reporting period, but he would not meet with her.

After Father was remanded to San Quentin, the social worker left a message for the counselor there in an effort to get him additional resources. She did not speak directly with the counselor. She also asked her supervisor to send Father a second packet of parenting education materials, although she did not remember receiving confirmation that he did so.

Daniel was consistently being reevaluated to determine whether his health permitted visitation. The social worker was in touch with the pediatrician, the public health nurse and Father about this issue, and Father was in regular contact with her. Because of Daniel's medically fragile condition, no visitation was provided when Father was hospitalized, incarcerated or ill. But Daniel's health improved by late February 2018 and Father visited consistently while he was at Crossroads.

Father's declaration was admitted into evidence. The social worker provided no education materials beyond the packet she sent him in December 2017. She offered no alternatives or accommodations when Father's health prevented him from obtaining in-patient treatment in late December 2017. When he became well enough in May 2018 he began AOD counseling and an anger management program, and after his release from HCCF in May he immediately started the Crossroads program. He completed 3 out of 6 Love & Logic classes and requested a mental health evaluation referral. Since his remand to San Quentin he made several requests for visits "and for accommodations to allow me to continue making progress towards reunification with Daniel, but none of those requests have been fulfilled." In response to a complaint Father lodged on June 14, on July 27 he received a letter from the Ombudsman for Child Welfare Services stating, without elaboration, that "[s]ome of the policies, procedures, and/or practices have not been appropriately followed, and this complaint was determined to be partially founded."

The court found by clear and convincing evidence that the Department made reasonable efforts to return Daniel to a safe home and that reasonable services had been provided or offered. The court further found the parents had not made significant

progress in resolving the problems that led to Daniel's removal or demonstrated the capacity and ability to complete the treatment plan objectives or provide for Daniel's protection, physical and emotional well-being and special needs, and his return to the parents would create a substantial risk of detriment to his safety, protection or physical or emotional well-being. The court terminated reunification services and set a permanency planning hearing pursuant to section 366.26. Father filed this timely petition under California Rules of Court, rule 8.452.

DISCUSSION

Section 366.21, subdivision (e) governs six-month review hearings. For children who are younger than three years old when removed, it authorizes the court to set a permanency planning hearing under section 366.26 if it finds by clear and convincing evidence that the parents failed to participate regularly and make substantive progress in their treatment plan. But if reasonable services were *not* provided, the court must continue the case for a 12-month permanency planning hearing. (§ 366.21, subd. (e).)

Father contends he was not offered reasonable reunification services. Although what constitutes reasonable services varies in each case with the particular needs of the family, as a general matter reunification services are adequate if: (1) the case plan identifies the problems leading to the loss of custody; (2) the offered services are designed to remedy those problems; and (3) the agency maintains reasonable contact with the parent and makes reasonable efforts to assist that parent in areas in which compliance proves difficult. (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414.) The standard is not whether services were perfect, but whether they were reasonable under the circumstances. (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.) On review, our "sole task . . . is to determine whether the record discloses substantial evidence which supports the juvenile court's finding that reasonable services were provided or offered." (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762; see *T.J. v. Superior Court* (2018) 21 Cal.App.5th 1229, 1238-1239 [appellate court conducts substantial evidence review " 'bearing in mind' " the clear and convincing standard of proof].) In assessing Father's contention, we view the evidence in a light most favorable

to the court's findings, resolving conflicts and construing all reasonable inferences in support of the judgment. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545; *In re Jasmine C.* (1999) 70 Cal.App.4th 71, 75.)

Father's assertion that he was not offered reasonable reunification services rests mainly on two points: (1) what he describes as "almost zero effort" from the Department when he was starting to serve his sentence between June 25 and August 2, 2018; and (2) the letter from the Department's ombudsperson, which he asserts "affirm[s] his complaint regarding a lack of contact and effort." Father also more generally asserts that "the evidence against a finding of reasonable services is bolstered by testimony of the Social Worker, an absence of information in the reports, and statements in Father's declaration." The argument is unpersuasive.

The record shows significant contact between the Department and Father throughout most of the dependency. Between Daniel's birth in November 2017 and the disposition hearing in February 2018 the social worker met or spoke with Father a number of times while he was incarcerated or hospitalized. They discussed the need for his participation in a substance abuse assessment and treatment, parenting education and anger management programs, as well as Father's requests for visitation. The social worker also provided Father with parent education materials. By late December, following a two-week period of no contact with Father after he absconded from the hospital, he told the social worker he had looked into two substance treatment programs and would obtain an AOD assessment.

The social worker tried to see Father at HCCF again in February, but he was hospitalized, and she was unable to speak with him. According to Father's declaration, from January to March his health deteriorated and he required hospitalization and intense medical treatment at HCCF. In early March the social worker was informed that Father was back at HCCF. He contacted her in early May to say he had been moved from the medical unit, was engaged in one-on-one and group counseling, and would be able to participate in AOD and anger management. The social worker confirmed this in a call with Father's counselor several days later. Later that month she approved funding for

Father to participate in Crossroads and spoke with Father and Crossroads personnel about his starting the program. Father was also referred to a mental health assessment and to parenting classes.

Father was released from HCCF on May 20. He started the Crossroads program on June 1, but on June 25 he was remanded into custody and transported to San Quentin State Prison. During the month between Father's release and remand the Department provided him with five visits and coaching on infant care. After his remand to San Quentin the social worker left a message for Father's counselor in an effort to provide him resources.

We disagree with Father's claim that his reunification services were inadequate. There could have been more consistent contact from the social worker while Father was incarcerated and/or hospitalized, particularly after his remand to San Quentin, but that does not undermine the court's finding of reasonable services. "Reunification services need not be perfect. [Citation.] . . . Services will be found reasonable if the Department has 'identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained reasonable contact with the parents during the course of the service plan, and made reasonable efforts to assist the parents in areas where compliance proved difficult'" (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 972-973.) That was done here. The "mere fact that more services could have been provided does not render the Department's efforts unreasonable." (*Id.* at p. 973.) Nor does the July 27, 2018 form letter from the Department ombudsperson "affirm" Father's position. It says only that "[s]ome of the policies, procedures, and/or practices have not been appropriately followed, and this complaint was determined to be partially founded." Nothing more is known about the ombudsperson's findings, including which "policies, procedures, and/or practices" were not appropriately followed or whether those shortcomings affected Father's reunification services.

This court carefully and thoroughly reviewed the record. We are satisfied that substantial evidence supports the trial court's finding that Father was provided with reasonable services.

DISPOSITION

The petition for an extraordinary writ is denied on the merits. (See § 366.26, subd. (l); see *In re Julie S.* (1996) 48 Cal.App.4th 988, 990-991.) Our decision is final immediately. (Cal. Rules of Court, rules 8.452(i), 8.490(b).)

Siggins, P.J.

We concur:

Fujisaki, J.

Petrou, J.

In re D.E., A155584